

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 04-227
Competition in the Market for the Delivery)	
Of Video Programming)	

**COMMENTS OF THE
SATELLITE BROADCASTING AND
COMMUNICATIONS ASSOCIATION**

Satellite Broadcasting and
Communications Association

July 23, 2004

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The Satellite Broadcasting and Communications Association hereby submits its comments to the Federal Communications Commission (“FCC” or “Commission”) in the above-referenced Notice of Inquiry.¹ SBCA is the national trade organization representing all segments of the satellite industry. The SBCA is comprised of Direct Broadcast Satellite (“DBS”), C-band, broadband, satellite radio, and other satellite service providers, content providers, equipment manufacturers, distributors, retailers, encryption vendors, and national and regional distribution companies that make up the satellite services industry.

I. INTRODUCTION AND SUMMARY

Video services via satellite have been offered over 20 years via the large-dish C-Band satellites. By the early 1990’s the C-Band service had grown to nearly two million subscribers.. In 1994, PRIMESTAR launched nationwide digital TV service via medium-power Ku-Band satellite and introduced the US consumers to the smaller and less expensive DBS service. The launch of DBS, only 10 years ago, enabled the incredible growth of satellite-delivered television

¹ *Notice of Inquiry (“Notice”) in the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, rel. June 17, 2004.

as a competitor to the entrenched cable monopolies. As of June 30, 2004, there were approximately 23.5 million households in the U.S. that receive multi-channel video via satellite.

Per ¶5 of the *Notice*, these comments encompass the July 1, 2003- June 30, 2004 period of multi-channel competition. During that time, the number of households that subscribe to DBS for multi-channel video service surpassed 23 million— 22 percent of all multi-channel video households. When the 335,766 households that receive C-band (or home satellite delivery, or “HSD”) service are included, over 23.4 million households receive multi-channel video via satellite. The DBS industry also gained a new service provider in this time period, VOOM, owned by Rainbow DBS, a subsidiary of Cablevision. VOOM has entered the market as a provider of high-definition (“HD”) programming with 35 HD channels.²

Many factors have contributed to the growth of DBS in the multi-channel video market, including image quality, superior customer service, competitive pricing, and programming selection. Since Congress, in 1998, granted the DBS providers a compulsory license for the retransmission of local stations, the availability of local services has been a key factor driving the continued growth of DBS. By January 2005, all 50 states and the District of Columbia will have at least one DMA which can receive local broadcast stations. Currently, consumers in 143 markets, or 93.7 percent of U.S. television households,³ are able to receive local broadcast stations via satellite from at least one DBS operator.

The fast-paced rollout of advanced services has also added to the growth of DBS. Today, viewers can receive multiple HD channels, interactive services, and personal video recording service equipment via DBS. This creates stronger competition to cable’s digital services as well as advances the transition to digital television.

² See Attachment A

³ According to Nielsen Media Research, there are 105.4 Million television households in the U.S. as of September 2003.

In order for satellite to remain fully competitive in the MVPD marketplace, the DBS industry will need the continued support of Congress and the FCC:

- Reauthorization of the Satellite Home Viewer Improvement Act ("SHVIA"):

SHVIA is critical to the DBS industry's ability to offer distant network signals and superstations to customers. If Congress fails to pass this legislation prior to the end of 2004, countless households will lose the ability to access programming they have come to enjoy and depend upon. The SHVIA reauthorization encompasses several other issues as well:

- DBS providers should be allowed to transmit a distant digital signal into the "digital white area" where the corresponding local broadcaster cannot transmit or is not transmitting digital signals to the customer.
 - Royalty rate increases should be on par with all members of the MVPD market.
 - Permission must be granted to allow DBS providers to transmit "significantly viewed" local programming in certain markets.
- Digital Transition– The Commission must take into consideration the technical differences among wired and satellite providers of multi channel video programming distributors ("MVPD"), particularly for the digital transition and carriage of HD broadcast stations. DBS operates in a fixed amount of spectrum and bandwidth is a limited resource.
 - Multicast must-carry should never be forced upon DBS, due to DBS' limited spectrum resources. Inclusion of DBS in such a regime could require DBS to cease transmission of large amounts of local-into-local programming.

- The DBS industry, not included in the first round of plug-and-play discussions, looks forward to active participation in the second round of plug-and-play discussions. It is critical that members of the MVPD industry provide input to such important discussions and decisions.
- The DBS industry also takes issue with the “terrestrial loophole.” MVPD providers do not have exclusivity on MVPD produced programming delivered via satellite; therefore they should not have exclusivity on terrestrially delivered programming as well.
- The “predictive model”, used to qualify households for distant signal transmission via DBS was developed in the 1950s and must be updated to become in line with today’s technologies and consumer viewing expectations.
- OTARD regulations should be expanded to cover more households, especially for apartments and condominiums without "exclusive use" areas.

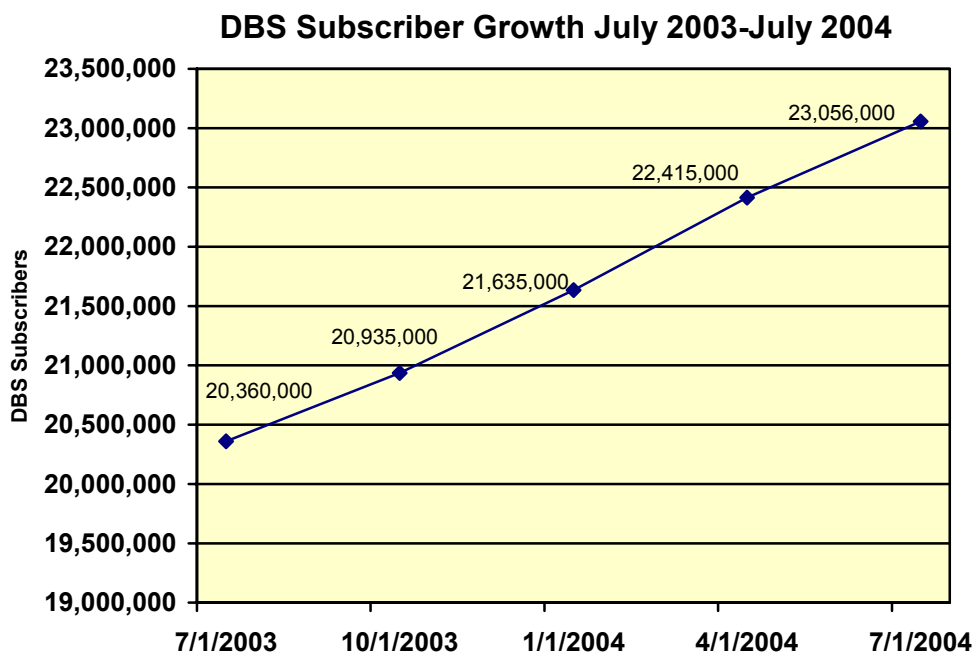
The Commission must craft regulatory environment that will not impede upon the expansion of DBS as a viable competitor in the MVPD market. Though various regulatory and legislative improvements, DBS has started to become a stronger competitor, however much more regulatory and legislative parity needs to be enacted for true competition to take place.

II. SATELLITE TELEVISION SUBSCRIBER INFORMATION

A. Satellite Television Subscriber Counts

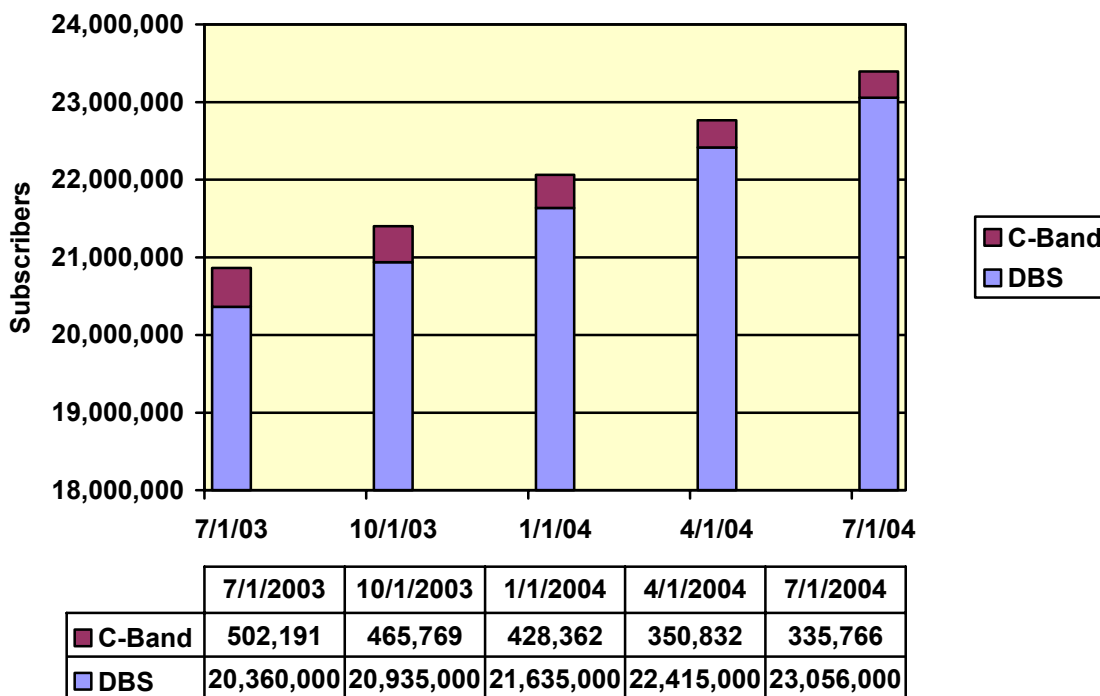
Per ¶5 of the *Notice*, these comments encompass the July 1, 2003- June 30, 2004 period of multi-channel competition. During that time, the number of households that subscribe to DBS

for multi-channel video service surpassed 23 million as of June 30, 2004.⁴ That is an increase of 13 percent from July 1, 2003, when there were 20.36 million DBS subscribers. As of June 30, 2004, there were 335,766 households that receive C-band service, a decrease from the 502,191 reported in the previous year. In total, satellite television serves approximately 23.4 million households,⁵ 22 percent of television households depend on satellite-delivered technology for their multi-channel television service. (§8)



⁵ Subscriber numbers are provided by DIRECTV, Inc., EchoStar Communications Corp., and Motorola Access Control Center (which tracks C-band subscriptions). Approximations made for second quarter 2004 as data not available publicly yet.

Satellite Television Subscriber Totals



B. DBS Subscriber Trends and Statistics

SBCA has compiled the following subscriber statistics and trends from a consumer market research study and a competitive market study performed for SBCA by the Taylor Group.⁶ The DBS Subscribers Study was performed in April 2003 and the Competitive Market Analysis Study was performed in August 2003. Combined, the studies incorporate over 2500 responses from households all over the U.S. Other portions of data are derived from a

⁶ Established in 1987, The Taylor Research & Consulting Group, Inc. (a privately held company) is an evidence-based consulting firm, providing qualitative and quantitative research to clients in domestic and international markets.

presentation from SBCA's SkyFORUM by Bruce Leichtman, president of Leichtman Research Group⁷.

Data from these studies and reports answers several specific questions about DBS and multi-channel video program distributor ("MVPD") subscriber trends asked in the *Notice*, indicated by paragraph number in parentheses following the data.

1. Overall, 69 percent of DBS subscribers have access to cable service (§9). Broken down by geographic region: 43 percent of rural DBS subscribers, 91 percent of urban DBS subscribers, and 92 percent of suburban DBS subscribers have access to cable. In rural areas in which both cable and satellite video services are available, DBS subscriber penetration is 2.5 times higher than in urban or suburban areas. (§45)
2. Of the approximately 10 percent of U.S. households in which cable service is not available, 66 percent of those households subscribe to satellite TV service. (§45)
3. Of DBS subscribers who have subscribed to DBS for less than one year, 41 percent live in an urban setting, 32 percent in a suburban area, and 23 percent in a rural location (§45).
4. Two percent of all multi-channel video subscribers subscribe to both cable and satellite services (§9). In 2002, the percentage of concurrent DBS and cable subscribers was four percent and in 2000 was 10 percent-- a significant decline over the last four years indicating that DBS subscribers no longer need to rely on cable for local broadcast programming. Among DBS subscribers, these statistics can be further broken down: 12 percent of DBS subscribers with access to cable subscribe to both services. By comparison, in 2000, 20 percent of DBS subscribers with access to

⁷ The Leichtman Research Group provides strategy advisory services, research and consulting services and industry surveys and analysis in the cable TV, satellite, broadband and video on demand and interactive TV services industry.

cable subscribed to both DBS and cable. This reduction in dual cable/DBS subscription is due largely in part to the significant increase in local-in-local markets served. (¶46)

5. For those households that switched to DBS in the last year and had cable services available, 53 percent switched from standard cable, nine percent switched from digital cable service, 26 percent did not subscribe to either cable or DBS prior and 12 percent switched from another DBS service. Seventy-one percent of “new” DBS subscribers (those who have subscribed to DBS for less than one year) have cable available, compared to 60 percent of new DBS subscribers in 1999 (¶45).
6. Fifty-eight percent of DBS subscribers polled in the Taylor Group SBCA study responded that they receive broadcast programming (either local-into-local or distant networks) via DBS. Of those who receive broadcast programming via DBS, 92 percent receive local-into-local signals and 12 percent receive distant network signals. (This total adds to 104 percent as some subscribers receive both local and distant network programming.) In 2002, 84 percent of satellite subscribers were able to get local-into-local programming and 19 percent relied on distant network signals. (¶46)

III. DBS AS A COMPETITOR IN THE MVPD MARKET

DBS is the fastest-growing competitor to cable in the MVPD market. DBS offers subscribers high quality, competitive pricing, superior customer service, and a growing product line of advanced digital services and an expanding channel line-up (including local broadcast signals to more consumers and high-definition programming.) DBS households in areas where cable services are also available gave the following reasons for choosing DBS:

- 33 percent chose DBS because it offered more channels

- 22 percent chose DBS based on price
- 16 percent chose DBS for better picture and sound;
- 15 percent were dissatisfied with cable's customer service;
- 7 percent chose DBS to get more sports programming
- 4 percent chose DBS for the interactive TV capabilities; and
- 3 percent chose DBS for access to season ticket sports.

A. DBS Customer Satisfaction

Not only does satellite compete favorably over cable in subscriber rate increases, DBS repeatedly scores well above cable in independent consumer satisfaction surveys. As reported in SBCA's comments filed for this same proceeding's NOI from last year,⁸ in July 2003, J.D. Power and Associates reported that the two DBS providers, DIRECTV and DISH Network, received the first and second highest scores, respectively, in its 2003 Residential Cable/Satellite TV Customer Satisfaction Study.⁹ Just this year, the American Customer Satisfaction Index (ACSI)¹⁰ released its first quarter scores regarding customer satisfaction in the Telecommunications/Cable & Satellite TV industries. Once again, both DISH Network and DIRECTV scored the highest in this category, both with a composite score of 71 (on scale of 0-100.) The weighted cable industry score was 59, well below satellite's scores in customer satisfaction.¹¹

A. Satellite Installers Professional Education Program

⁸ See SBCA Comments, September 11, 2003, MB Docket 03-172.

⁹ See Appendix E.

¹⁰ American Customer Satisfaction Index (ACSI) was established in 1984 and is produced by a partnership of the University of Michigan Business School, American Society for Quality and CFI Group. ACSI measures and reports household consumption experience and customer satisfaction.

¹¹ See Appendix F

In August 2001, SBCA launched the National Standards and Testing Program (“NSTP”), a set of courses designed to ensure continued professional education for DBS installers and a nationally-accepted set of training standards and testing for DBS installations. DBS providers and regional distributors agreed to the NSTP standards and participate in the program.¹² Since 2001, SBCA has trained and tested over 36,000 DBS installers, and 30,000 of those individuals have earned NSTP certification. Ninety percent of DBS subscribers had their system installed professionally in 2003,¹³ and NSTP training and certification is a contributor to the high customer service marks that DBS subscribers give to their DBS provider.

B. DBS Local-Into-Local Market Growth

The DBS industry also provides the retransmission of local network stations in all 50 states and the District of Columbia. Currently, 143 DMAs are served by at least one DBS platform provider, covering almost 94 percent of U.S. households.¹⁴ Staying true to last year’s goal of over 90 percent of households served by local broadcast stations via satellite, the two major platform providers DIRECTV and EchoStar’s DISH Network combined increased service coverage by over 14 percent in the last year, from 79 percent of U.S. households in June 2003. (¶8) The roll-out of satellite-delivered local-into-local service, authorized by SHVIA in 1999, helps to level the competitive landscape by allowing DBS providers to offer highly-desirable local programming, as cable operators have done for years. The expansion of local-into-local service by DBS providers continues to be one of the principal reasons that customers subscribe

¹² Participating companies include: DIRECTV, DISH Network, All-Systems Distributing, Apex Digital, Circuit City, CVS Systems, Dow Electronics, DSI Systems, JVI Parts, Installs, Inc., Metron North America, Mid-State Distributing, the National Rural Telecommunications Cooperative (“NRTC”), O’Rourke Bros., Perfect-10, Pegasus Communications, Radio Shack Installation Services, Saturn Distributing, Sirius, XM Satellite Radio and numerous independent retailers.

¹³ See SBCA DBS Subscriber Study.

¹⁴ See Attachment B

to DBS. Currently, consumers in 143 markets, or 93 percent of U.S. television households, are able to receive local broadcast stations via satellite from at least one DBS operator. That is an increase of 58 markets since July 2003, when at least one DBS operator offered local broadcast stations in 85 markets, reaching 79 percent of the US.¹⁵ In 2000, the first full year that DBS providers were allowed to retransmit local broadcast stations into local markets, only 19 percent of DBS subscribers received local signals via DBS.¹⁶

C. Satellite Fleet Expansion

DBS providers have invested significant capital to improve the technology used to offer local-into-local service and advanced services such as broadband and expanded their satellite fleets. Newly launched satellites expand the ability of DBS platform providers to offer local broadcast stations to an increasing portion of the country, thereby creating a more competitive MVPD market. In the last year, both DIRECTV and EchoStar launched new satellites to expand their service offerings to customers. EchoStar's satellite launched in August of 2003, EchoStar IX, is equipped with a Ka-band spot-beam which will be used to provide broadband services, and a KU-band fixed transponder to augment DISH Network's satellite video service. DIRECTV launched DIRECT 7S in May of 2004 to expand programming offerings and provide local broadcast service in 19 new markets.

D. International Programming

An oft mentioned reason for households to switch to DBS for video service is the vast array of programming offered. Satellite offers numerous HD channels, pay per view program and movie offerings and an array of international programming—as well as popular cable

¹⁵ See SBCA Comments, July 29, 2002, MB Docket 02-145.

¹⁶ See 2000 SBCA DBS Subscriber Study, performed by The Yankee Group.

channels and local broadcast stations. The DBS industry provides international and non-English speaking households with programming offerings in other languages including Spanish, Chinese, Korean, Urdu, Arabic and Polish. A recent study found that among DBS subscription and ethnicity, Hispanic households were the largest percentage. Both DISH Network and DIRECTV offer special Spanish programming packages, encompassing over 30 channels of Spanish-language programming.

E. Advanced Digital Services

The fast-paced rollout of advanced services such as HD programming has also added to the growth of DBS as a competitor to cable. High-definition programming is attractive to DBS subscribers and DBS providers have responded by offering cable channels, movie channels, pay per view and special events in HD. DIRECTV and DISH Network each offer just fewer than ten HD programming channels. The combined HD offerings of DIRECTV and DISH Network together include HD channels Discovery HD Theater, TNT in HD, ESPN HD, HBO-HD, HDNet, HDNet Movies, Showtime HD, a national feed of CBS-HD, and pay per view movies and special events in HD. VOOM, launched less than a year ago as an HD programming provider, currently offers 35 channels in HD, including 21 channels of original programming. Nine percent of DBS subscribers (in areas in which cable is available) own HD capable hardware for HD viewing, only four percent of cable providers have HD capable equipment.¹⁷ The DBS industry is further promoting HD through the offering of HD receivers and HD TV set packages and offering special equipment packages to upgrade current customers to HD.

DBS is also a provider of other advanced programming services including pay per view movies and events and interactive TV. DBS leads the industry in the promotion of DVRs

¹⁷ See Leichtman Research Group Research Notes, 3rd Quarter 2003.

“digital video recorders,” by offering set-top DBS boxes with DVR functionalities. In fact, according to a recent Nielsen study, 11.4 percent of satellite customers have a DVR, as compared to 5.6 percent of cable customers.

F. Broadband and Telecommunications Services

Broadband internet services are provided by DBS providers, either as a satellite offering or through a relationship with a DSL provider. DBS providers have also recognized customer desires to have bundled communications services and have partnered with local telephone providers to offer a bundled package of video, local/long distance voice, wireless and data services. DBS’ advanced services offerings and bundled services promotions are aimed to create not only value for their customers, but to also more effectively compete with cable.

IV. REGULATORY IMPEDIMENTS TO DBS’ COMPETITIVE STATUS

A. Reauthorization of the Satellite Home Viewer Improvement Act (SHVIA)

Congress is currently addressing the reauthorization of SHVIA. While satellite carriers were given a permanent license to retransmit local broadcast stations to consumers in 1999, the compulsory copyright license under which satellite carriers offer distant network signals and superstations expires on December 31, 2004. All committees of jurisdiction have been actively working on SHVIA's reauthorization, and SBCA is confident that these licenses will be renewed. It is essential that Congress finishes this reauthorization prior to the end of 2004, for if it does not, countless households will lose the ability to access programming they have come to enjoy and depend upon.

1. Royalty Rates

SHVIA will also likely affect the royalty rates paid by DBS for access to distant network signals and superstations. Currently DBS faces the uncertainty of Copyright Arbitration Royalty Panels who set many royalty rates for DBS, while for cable, rates are statutorily set leading to no uncertainty. Congress is examining several options for restructuring the rates paid by DBS. It is imperative that the DBS be granted the certainty similarly afforded to cable. The current regime dramatically affects the ability of DBS to effectively compete with other MVPDs.

2. Significantly Viewed

Congress is also considering allowing DBS to provide local broadcast programming from nearby markets to households which receive local and out of market network signals via broadcast, however only if the out of market signal is "significantly viewed" by households in that area. For example, such a rule would allow DBS households in Baltimore, an area which receives broadcast signals from both Baltimore and Washington, D.C. and "significantly viewed," to receive both markets' local broadcast stations via DBS. Other MVPDs currently have this authority and in order to provide a truly level competitive playing field, DBS must also have the right to transmit significantly viewed signals as well. SBCA encourages the Commission to help correct this regulatory imbalance.

3. Digital White Area

SBCA believes that DBS providers should be permitted to provide advanced digital services to those consumers currently unable to receive a digital signal over the air. A critical piece of the current proposed SHVIA legislation is language to allow the satellite industry to transmit distant digital signals into the so-called "digital white areas" (informally defined as a

geographic area in which consumers cannot receive a digital signal from their local broadcaster, as either the broadcaster is not transmitting digital signals or the broadcaster's digital signal does not have sufficient strength to reach the consumer). By allowing DBS to offer network digital programming nationwide, Congress would generate increased demand for digital television equipment, thus moving the country closer to a full digital transition.

B. Regulation of Digital Transition

DBS providers were the first MVPD to transmit television signals in digital format, and they continue to be the leaders in the distribution of digital and HD content. SBCA supports the deployment of digital television in the U.S. to benefit all consumers. However, the efforts by the Commission to advance digital television and any resulting regulations should be narrowly crafted to permit free-market competition in the consumer electronics and MVPD industries.

1. Carriage of High Definition Broadcast Signals

DBS is constrained to their spectrum allocations, which therefore limits the amount of bandwidth available for programming transmission. The bandwidth requirements of HD programming are quite intensive and the forced carriage of HD signals would severely limit the ability of DBS providers to offer local broadcast stations. If the "carry one, carry all" regime prescribed by the 1999 Satellite Home Viewer Improvement Act¹⁸ (SHVIA) were extended to HD signals, the tremendous capacity burden these signals present, may limit the expansion, not to mention, the current offering of local-into-local service, nullifying the intent of Congress when it enacted SHVIA. This will further impede competitive parity only now being reached between cable and DBS.

¹⁸ Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106-133 (1999), 17 U.S.C. §122.

2. Multicast Must-carry

Similar to the capacity constraints involved in carriage of HD broadcast signals, DBS must not be forced to carry broadcasters' multicast programming or data-cast services. Unlike local cable providers, which only retransmit approximately twenty local broadcast stations, DBS must transmit hundreds of stations simultaneously from very few CONUS or spot-beam satellites. Compression and spot-beam technology has led to impressive expansion of DBS's local-into-local service, but forced carriage of multicast programming would require DBS to either broadcast all local stations to all areas of the country - even though only certain locales can legally view the local programming, or cease local-into-local service so that spot-beam satellites can retransmit multicast programming. DBS satellites simply do not have the capacity to transmit national programming, local-in-local programming, and multicast programming or data-cast services. The Commission should not force such an impossible burden onto cable's only viable competitor.

3. Cable-Consumer Electronics "Plug-and-play"

In December 2002, major cable providers and consumer electronics manufacturers proposed that the Commission implement rules that create technical standards for "cable-ready" digital television sets. Included in the agreement, submitted to the Commission in the form of an MOU, are several regulations concerning content protection and encoding rules that would be forced upon *all* MVPDs, despite the exclusion of input from other industries, including DBS operators and content providers.

SBCA, DIRECTV and EchoStar Communications filed comments during the comment and reply period for the Further Notice of Proposed Rulemaking.¹⁹ However, the Commission adopted the regulations proposed in the MOU,²⁰ despite the exclusion of these interested parties from the negotiations that crafted the new rules and a proposal from the DBS providers²¹. This proposal outlined how the MOU could be altered to maintain the consumer benefits of creating standards for cable-ready digital televisions while not unfairly imposing rules on industries that were not permitted to be part of the discussion when the rules were being crafted. Consumer choice should not be infringed by a one-way connectivity deal between electronic manufacturers and cable providers. SBCA and its member companies will work with manufacturers and cable platforms to ensure that the connection standard is structured so that it has no impact on a consumer's selection of a MVPD. The exclusion of satellite in the first round of negotiations on this issue created a potentially very damaging situation that could still disadvantage millions of satellite TV consumers and potential customers. That being said, DBS is currently engaged in the second round of plug and play talks with cable providers and consumer electronics manufacturers, and DBS looks forward to developing an agreement that will serve to increase competition in the multi-channel video marketplace by ensuring that consumers of satellite services have equal access to the next generation of digital television sets.

¹⁹ See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Further Notice of Proposed Rulemaking, CS Docket 97-80, PP Docket No. 00-67, FCC 03-3, rel. January 10, 2003.

²⁰ See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Second Report and Order and Second Further Notice of Proposed Rulemaking, CS Docket 97-80, PP Docket No. 00-67, FCC 03-225, adopted September 10, 2003.

²¹ See *Letter to Chairman Michael K. Powell from Eddy W. Hartenstein and Charles W. Ergen, Ex Parte Notice, Re: Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, PP Docket No. 00-67, filed September 3, 2003.

C. Terrestrial Loophole

In June of 2002 the Commission adopted regulations²² which ruled that other MVPDs cannot withhold satellite delivered programming they produce from DBS providers, specifically; programming that arrives to the MVPD headend via satellite. However, when MVPD produced/controlled programming is delivered terrestrially to its headend, they retain exclusive rights to the programming. This "terrestrial loophole" allows competitors to retain exclusive rights to popular programming and prevents DBS from providing consumers with programming they wish to view, creating a tremendous disadvantage to DBS' programming offerings as compared to the other MVPD provider. The Commission should end such programming discrimination by wireline MVPDs.

D. Predictive Model

The analog "predictive model," used to determine if a specific geographic area receives a satisfactory analog broadcast signal, was developed in the 1950s and was intended to measure the strength between broadcast antennas. Consumers today expect better picture quality and viewing experiences than the predictive model's 1950s Grade B standard asserts. Therefore, the Commission should update the model to incorporate advances in consumer viewing quality expectations and the actual geographical topologies that may inhibit signal reception.

²² See *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act, Sunset of Exclusive Contract Prohibition*, Report and Order, CS Docket 01-290, FCC 02-176, released June 28, 2003.

E. MDU Competition

In the *Notice*, the Commission asks for comment on competition in the multiple dwelling unit (“MDU”) submarket.²³ The extension in 1998 of the over-the-air reception device (“OTARD”) rules to viewers who reside in rental properties opened the DBS market to a significant part of the U.S. population. However, the Commission only allows for viewers who are renters and who have an area of “exclusive use or control” to be covered by the OTARD rules.²⁴ This excludes a number of potential satellite viewers, especially those without a patio or balcony, and those whose patio or balcony does not face the necessary direction to receive DBS signal reception. Statistically, DBS penetration is well below average in apartments and condominiums as compared to single family homes. Only 10 percent of condominium households and seven percent of apartment households currently subscribe to DBS as compared to 21 percent of single family house households.²⁵ This disparity indicates that there are still impediments to expanding MVPD choice and competition in the MDU submarket. The Commission should more closely examine OTARD in an effort to expand DBS adoption in MDUs.

V. TEN-YEAR ANNIVERSARY OF DBS—PAST AND FUTURE

DBS is celebrating its 10 year anniversary with a tremendous amount of success -- DBS services have been rated best video programming service by JD Powers and Associates and the

²³ Notice at ¶12.

²⁴ See *In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multi-channel Multipoint Distribution and Direct Broadcast Satellite Services*, Second Report and Order at ¶29, CS Docket 96-83, rel. November 20, 1998.

²⁵ Leichtman Research Group skyForum presentation April 13, 2004.

American Customer Satisfaction Index (ACSI)²⁶, local broadcast programming is available via DBS to over 93 percent of all households (an increase from 19 percent in 2000), and subscriber growth has been consistently in the double digits over the last ten years. DBS' success through high quality and quantity programming, exceptional customer service and growth of local-into-local footprint has increased and intensified competition in the MVPD market. However, even with all of satellite's growth and offering of advanced services, it still provides service to less than 25% of U.S. households, even with the capability of providing local broadcast service to over 93% of all U.S. households.

At the end of 1994, 2.7 million households received television signals from satellite: 2.2 million used C-band technology, 183,000 subscribed to medium-power DBS from PrimeStar, and DIRECTV served 320,000 viewers with its high-power DBS system.²⁷ Two years after the initial launch of DBS, EchoStar launched DISH network and in 1999, DIRECTV acquired PrimeStar's satellites and customers. In the fall of 2003, an additional high-power HD content DBS provider, VOOM, entered the MVPD market.

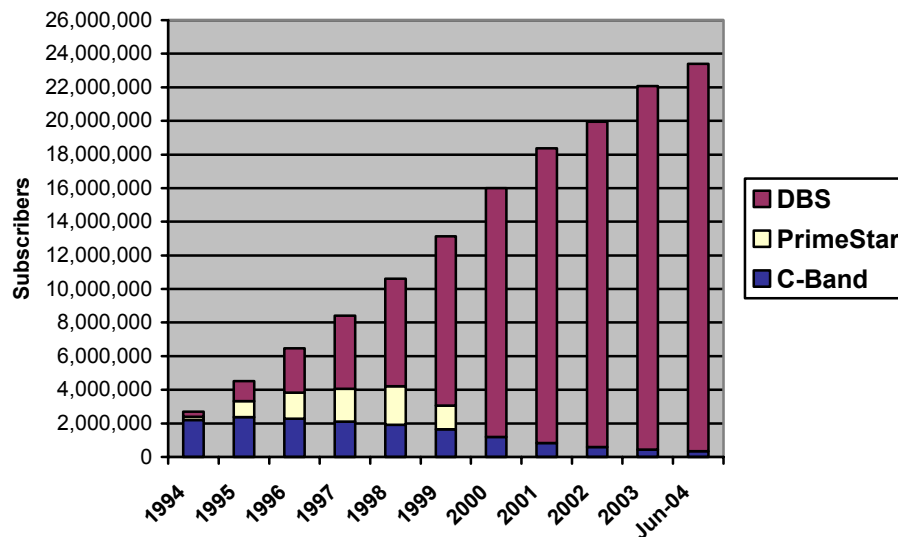
Although there has been momentous growth in the satellite video services industry as a whole, the pioneer satellite technology, C-Band, has declined significantly in the past decade, primarily due to the launch of DBS and its superior programming capabilities. What has also been a factor in C-Band's decline is the growth in the availability of local broadcast programming via DBS, initially a competitive disadvantage for DBS until the authorization of SHVIA in 1999. Today, with three high-powered DBS platform providers, DIRECTV, EchoStar Communication's DISH Network and Rainbow DBS' VOOM, DBS subscription

²⁶ American Customer Satisfaction Index (ACSI) was established in 1984 and is produced by a partnership of the University of Michigan Business School, American Society for Quality and CFI Group. ACSI measures and reports household consumption experience and customer satisfaction.

²⁷ DIRECTV launched its DBS service in June 1994.

continues to grow. The DBS industry expects continued growth over the next four years and Leichtman Research Group forecasts that in 2008, there will be over 30 million DBS subscribers in the US.

Satellite Video Service Growth 1994-2004



The advent of satellite-delivered television as a competitor to cable and DBS' remarkable growth has been augmented by a regulatory environment, crafted by Congress and the Commission, designed to foster competition. The program access law's prohibition on cable exclusivity,²⁸ intended to increase competition and diversity in the multi-channel video market by requiring vertically-integrated programmer/cable companies generally to sell their programming to all MVPDs at non-discriminatory prices, terms, and conditions, has allowed satellite television providers to offer a wide variety of programming at competitive prices—a key factor for attracting subscribers. As described above, the impact of satellite-delivered local-into-local service, authorized by SHVIA in 1999, further levels the competitive landscape by allowing DBS providers to offer highly-desirable local broadcast programming, that cable

²⁸ 47 U.S.C. §548.

operators have provided for years. This year's reauthorization of SHVIA by Congress is critical to the DBS industry to continue providing competitive video services. Finally, the creation and implementation of the OTARD rules, which afford viewers protection from restrictions that unreasonably delay or increase the cost to install, maintain, and use DBS antennas, or restrictions that preclude the reception of an acceptable quality signal, have allowed DBS penetration to continue to increase across the country.

VII. CONCLUSION

The introduction of DBS technology furthered the competitive position of satellite over the last 10 years. Increasing DBS' competitive position was the passage of SHVIA, allowing DBS platform providers the ability to provide the same local broadcast programming which cable had the ability to provide already. DBS' promotion of new technologies such as HD programming and interactive TV, competitive prices and noteworthy customer service awards have and will continue to attract new subscribers. However, the Commission must still be vigilant with the development and enforcement regulations that protect and foster these competitive gains for satellite and allow DBS reach its full potential as a competitor to cable in the multi-channel video market. The Commission must be careful to craft digital transmission policies that take into account the vast technological differences among MVPD providers and their ability to transmit HD signals as technology and consumer demands continue to advance. It will also be critical in the coming year for the Commission to oversee the implementation of this year's SHVIA reauthorization to ensure a level competitive landscape among MVPD providers. The formulation of fair regulation is critical to the DBS industry to continue providing the best service it can to its customers as well as for it to reach its full potential in the multi-channel video market.

Respectfully submitted,

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